

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2007-002065

10/30/2013

HONORABLE CHRISTOPHER COURY
FOR HONORABLE SUSAN M. BRNOVICH

CLERK OF THE COURT
Y. Gano
Deputy

IN RE THE MATTER OF
DARCI JACOBUS

DARCI JACOBUS
6770 N 47TH AVE #2002
GLENDALE AZ 85301

AND

JOSE LUIS GONZALEZ

JOSE LUIS GONZALEZ
2740 W COUNTRY GABLES #205
PHOENIX AZ 85053

MARY THUENEN

MARY CATHERINE MCDONALD

AG-CHILD SUPPORT-EAST VALLEY
OFFICE
FAMILY COURT SERVICES-CCC
IV-D JUDICIAL ASSISTANT - SE

MINUTE ENTRY

Courtroom 703 - CCB

10:35 a.m. This is the time set for Trial on the Petition for In Loco Parentis Custody Determination filed by Intervenor, Mary Thuenen on June 10, 2013. Petitioner/Mother, Darci Jacobus, is neither present nor represented. Respondent/Father, Jose Luis Gonzalez, is present on his own behalf. Intervenor, Mary Jane Thuenen, is present with counsel, Mary Catherine McDonald.

A record of the proceedings is made by audio and/or videotape in lieu of a court reporter.

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Discussion is held with the Court regarding the status of the case.

Jose Luis Gonzalez and Mary Thuenen are sworn.

Discussion continues.

The Court is advised that the parties have reached an agreement on the issues, which agreement is more fully set forth on the record and can be generally summarized as follows:

- Respondent/Father agrees that Intervenor, Mary Thuenen, should be granted sole legal decision making regarding Ivy Rayne Jacobus-Gonzalez (DOB: 09/02/04).

Respondent/Father testifies that he heard and understood the agreement as dictated in the record, and that this is, in fact, their agreement.

THE COURT FINDS that the agreement entered into by Father is not unfair, and is reasonable, and is in the best interests of the parties' minor child.

IT IS ORDERED approving the agreement of Father as dictated into the record this date as a binding agreement pursuant to Rule 69, Arizona Rules of Family Law Procedure.

Discussion continues.

Mary Jane Thuenen, previously sworn, testifies.

IN LOCO PARENTIS LEGAL DECISION MAKING

Jurisdictional Findings

Mary Jane Thuenen ("Grandmother") seeks in loco parentis legal decision making authority of Ivy Rayne Jacobus-Gonzalez, born September 2, 2004 (the "Child") under A.R.S. § 25-415.

THE COURT FINDS that Petitioner Darci Jacobus ("Mother") and Respondent Jose Luis Gonzalez ("Father") have one minor child, namely Ivy Rayne Jacobus-Gonzalez, born September 2, 2004. Grandmother and the Child have resided in Arizona continuously for at least the six months preceding the filing of the pending petition. This Court, therefore, has jurisdiction as Arizona is the "home state" of the Child. *See* A.R.S. § 25-1031.

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The Court has jurisdiction in this matter to hear Grandmother's action. No court of competent jurisdiction has entered or approved of an order concerning the Child's custody within the last year, and Mother and Father were not married to each other at the time of filing of the present Petition. *See* A.R.S. § 25-415.A.4.

Grandmother bears the burden of overcoming by clear and convincing evidence the presumption that it is in the Child's best interest for the Court to award legal decision making to a legal parent. Subsection A.R.S. § 25-409.B provides as follows under the circumstances of this case:

[I]t is a rebuttable presumption that awarding legal decision-making to a legal parent serves the child's best interests because of the physical, psychological and emotional needs of the child to be reared by a legal parent. A third party may rebut this presumption only with proof showing by clear and convincing evidence that awarding legal decision-making to a legal parent is not consistent with the child's best interests.

In Loco Parentis Findings: A.R.S. § 25-409

Grandmother must establish that she stands *in loco parentis* to the Child. Under A.R.S. § 25-401(1), a person stands *in loco parentis* if a person "has been treated as a parent by the child and . . . has formed a meaningful parental relationship with the child for a substantial period of time."

THE COURT FINDS that Father does not dispute that Grandmother stands *in loco parentis*.

THE COURT FURTHER FINDS that Mother has failed to appear, and the record is devoid of any evidence of good cause. Mother, therefore, has not disputed that Grandmother stands *in loco parentis*.

THE COURT FURTHER FINDS as follows:

- The Child has lived with Grandmother since the date of her birth either on a periodic basis (weekends) or a continuous basis (such as the past six months).
- The Child treats Grandmother as her parent.
- The Child and Grandmother have a meaningful relationship.

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- Placement of the Child with either Mother or Father would be significantly detrimental to the Child. Father is just becoming re-acquainted with the Child, and Mother has disappeared.
- No court of competent jurisdiction has entered or approved of an order concerning the Child's custody or legal decision-making within one year before the Petition was filed in this matter, and Mother and Father were not married to each other at the time of the filing of the Petition.

IT IS THEREFORE ORDERED that Grandmother stands *in loco parentis* to the Child.

LEGAL DECISION-MAKING

Jurisdictional Findings

THE COURT FINDS that Mother and Father have the Child in common. Grandmother, Father and the Child have resided in Arizona continuously for at least the six months preceding the filing of the pending petition. This Court, therefore, has jurisdiction as Arizona is the "home state" of the Child. *See* A.R.S. § 25-1031. Further, this Court has jurisdiction pursuant to A.R.S. § 25-402.

THE COURT FURTHER FINDS that the federal Parental Kidnapping Prevention Act does not apply and that no international law concerning the wrongful abduction or removal of children applies.

Best Interest Findings: A.R.S. § 25-403

Section 25-403(A) enumerates specific factors for the Court to consider, among all factors that are relevant to the Child's physical and emotional well-being. The best interest of a child is the primary consideration in awarding legal decision-making authority and parenting time. *Hays v. Gama*, 205 Ariz. 99, 102, ¶ 18, 67 P.3d 695, 698, ¶ 18 (2003).

In making the legal decision-making and parenting time determination, the Court is mindful that as a matter of public policy, absent evidence to the contrary, "it is in a child's best interest: (1) To have substantial, frequent, meaningful and continuing parenting time with both parents[; and] (2) To have both parents participate in decision-making about the child." *See* A.R.S. § 25-103(B).

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As precursor to the analysis of the Child's best interest and because of the parties' inability to reach an agreement, the Court considers the following issues regarding the parents. See A.R.S. § 25-403.01.

1. *Whether a parent's lack of an agreement is unreasonable or is influenced by an issue not related to the child's best interests.* Grandmother has not had any contact with Mother.
2. *The past, present and future abilities of the parents to cooperate in decision-making about the children to the extent required by the order of joint legal decision-making.* In the past, the Child has lived with Mother. Mother took care of the Child for a number of years of the Child's life. Mother then disappeared, leaving behind her belongings and the Child. Grandmother has had no contact with Mother since then and, as such, Mother's present and future abilities to engage in decision making for the Child are presently unknown.
3. *Whether the joint legal decision-making arrangement is logistically possible.* Because Mother's whereabouts are unknown, joint legal decision-making is presently impossible. Father is in agreement with Grandmother standing *in loco parentis* and exercising sole legal decision-making authority.

THE COURT FURTHER FINDS as follows regarding the Child's best interests pursuant to A.R.S. § 25-403(A):

1. *The past, present and potential future relationship between the parent and the child.* The Child has stayed at Grandmother's house almost every weekend since birth. The Child has lived continuously with Grandmother since early 2013. They have a good relationship.
2. *The interaction and interrelationship of the child with the child's parent or parents, the child's siblings and any other person who may significantly affect the child's best interest.* The Child sees Father occasionally; he just returned to Arizona from Nevada earlier in 2013. The Child had a good relationship with Mother when she was around. Following Mother's disappearance, the Child has had no contact with Mother.
3. *The child's adjustment to home, school and community.* The Child is well adjusted in all respects.
4. *If the child is of suitable age and maturity, the wishes of the child as to legal decision-making and parenting time.* The Child is not yet of suitable age or maturity.

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5. *The mental and physical health of all individuals involved.* Grandmother and Father are in good health. Mother's present health is unknown, due to her disappearance.

6. *Which parent is more likely to allow the child frequent, meaningful and continuing contact with the other parent.* Grandmother is willing to allow the Child to have appropriate contact with both Mother and Father, in the Child's best interests.

7. *Whether one parent intentionally misled the Court to cause an unnecessary delay, to increase the cost of litigation or to persuade the Court to give legal decision-making or parenting time preference to that parent.* There is no credible evidence in this respect.

8. *Whether there has been domestic violence or child abuse pursuant to A.R.S. § 25-403.03.* No credible evidence has been presented to the Court in this respect.

9. *The nature and extent of coercion or duress used by a parent in obtaining an agreement regarding legal decision-making or parenting time.* No credible evidence has been presented to the Court in this respect.

10. *Whether a parent has complied with chapter 3, article 5 of title 25, Arizona Revised Statutes.* The domestic relations education provisions of A.R.S. § 25-352 have not been fully satisfied. Mother, Father and Grandmother have not completed the Parent Education Program requirements of A.R.S. § 25-352 and/or presented proof of completion as required. All parties shall complete an approved Parent Education Program and file proof of completion with the Clerk of this Court on or before January 31, 2014. Any party who has not completed the Parent Education Program requirements of A.R.S. § 25-352 as ordered may be held in contempt of court, and shall not file any subsequent pleadings to modify or enforce any provisions of this Judgment until he or she has filed proof of completion. A "Parent Information Program Notice" is available to the parties at the Self Service Center and the Family Court filing counter. The notice details the program's requirements and includes a list of approved parent information classes.

10. *Whether either parent was convicted of an act of false reporting of child abuse or neglect under A.R.S. § 13-2907.02.* No credible evidence has been presented to the Court in this respect.

In addition to the foregoing, the Court must also consider any history of domestic violence or child abuse (A.R.S. § 25-403.03), any substance abuse issues (A.R.S. § 25-403.04,) and any sexual offender issues (A.R.S. § 25-403.05).

(a). *Domestic Violence or Child Abuse.* There are no alleged acts of domestic violence or child abuse.

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(b) *Substance Abuse.* Mother has a long term history of drug use. Earlier in 2013, she was in an inpatient detoxification program. There are no other allegations concerning recent substance abuse by any other party.

(c) *Sex Offender.* There are no allegations relating to sex offenders.

In Loco Parentis Legal Decision-Making Authority

Legal decision-making authority, as defined by A.R.S. § 25-401(3), means the legal right and responsibility to make all non-emergency legal decisions for a child including those regarding education, health care, religious training and personal care decisions. For the purpose of interpreting or applying any international treaty, federal law, a uniform code or the statutes of other jurisdictions of the United States, legal decision-making means legal custody.

THE COURT FINDS as follows in addition to the above, which support Grandmother's request for *in loco parentis* legal decision making: Grandmother is willing to allow Father to have increasing parenting time with the Child in order to develop a healthy relationship between Father and the Child.

THE COURT FURTHER FINDS as follows in addition to the above, which do not support Grandmother's request for *in loco parentis* legal decision making: None.

THE COURT FURTHER FINDS that based upon the above and in accordance with the best interests of the minor Child, Grandmother Mary Jane Thuenen has established by clear and convincing evidence that based on her *in loco parentis* status, it is in the Child's best interest that Grandmother be awarded sole legal decision making of the Child, Ivy Rayne Jacobus-Gonzalez (born September 2, 2004).

IT IS THEREFORE ORDERED awarding Mary Jane Thuenen sole legal decision making authority of Ivy Rayne Jacobus-Gonzalez (born September 2, 2004).

IT IS FURTHER ORDERED that Mother and Father shall have parenting time with the Child at the discretion of Grandmother, in a length and frequency that Grandmother determines to be in the best interests of the Child.

IT IS FURTHER ORDERED directing Father and Mother to pay child support for the Child in an amount consistent with the Child Support Guidelines. This issue shall be addressed through the Attorney General's Office for Child Support Enforcement, and appropriate form(s) of Child Support Worksheet(s) and income withholding orders shall be submitted to the Honorable Susan Brnovich.

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IT IS FURTHER ORDERED requiring and directing the parties to participate in mediation, ADR and/or a settlement conference before filing a petition or motion to modify any of the Orders herein.

IT IS FURTHER ORDERED that all support payments made from and after today's date shall be made to Mary J. Thuenen and not to Petitioner Darcy Jacobus in this case absent further order of this Court.

IT IS FURTHER ORDERED that any support payments that were made to Petitioner Darcy Jacobus from and after September 30, 2013 shall be paid by Ms. Jacobus to Ms. Thuenen in this matter.

IT IS FURTHER ORDERED denying any affirmative relief sought before the date of this Order that is not expressly granted above.

IT IS FURTHER ORDERED signing this minute entry as a formal order of this Court pursuant to Rule 81, *Arizona Rules of Family Law Procedure*.

JUDICIAL OFFICER OF THE SUPERIOR COURT

11:01 a.m. Matter concludes.

All parties representing themselves must keep the Court updated with address changes. A form may be downloaded at: <http://www.superiorcourt.maricopa.gov/SuperiorCourt/Self-ServiceCenter>.